



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

AUG 20 2007

Ralph J. Caccia, Esquire  
Powell Goldstein LLP  
901 New York Avenue, N.W., 3<sup>rd</sup> Floor  
Washington, DC 20001

RE: MUR 5860  
Friends of Conrad Burns – 2006 and  
James Swain, in his official  
capacity as treasurer

Dear Mr. Caccia:

On October 30, 2006, the Federal Election Commission notified your clients, Friends of Conrad Burns – 2006 and James Swain, in his official capacity as treasurer, of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended. On August 13, 2007, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe your clients violated 2 U.S.C. § 441d. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Kathryn Lefeber, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan L. Lebeaux".

Susan L. Lebeaux  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Friends of Conrad Burns-2006      MUR 5860  
and James Swain, in his official  
capacity as treasurer

**I. INTRODUCTION**

This matter arises from a complaint alleging that an automated recorded telephone call did not include a disclaimer as required by the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the complainant alleges that on September 29, 2006, he received a 60-second recorded call, the content of which led him to assume it was made by the campaign of Senator Conrad Burns, or "some other group working on behalf of his reelection," but which "included no disclaimer information." Complaint at 1. Respondent Friends of Conrad Burns-2006 denies any involvement with the alleged call. *See* Response of Friends of Conrad Burns-2006 ("Response"). As discussed more fully below, the Commission found no reason to believe that Friends of Conrad Burns-2006 and James Swain, in his official capacity as treasurer, violated 2 U.S.C. §441d.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Summary**

The complainant, a Montana resident, alleges that on September 26, 2006, he received the following 60-second automated recorded telephone call/survey (the transcription of which he noted is "approximate"):

"Do you intend to vote in the 2006 election? Do you intend to vote for Sen. Conrad Burns? Do you intend to vote for Jon Tester? Do you think parents should have the

1 right to choose their child's school? Do you think marriage should be defined as  
2 between one man and one woman? If you knew the following information about  
3 Jon Tester – the information implied that Jon Tester would raise taxes, including  
4 references to Tester's record that have appeared in Sen. Burns' commercials – and  
5 that Sen. Burns has never voted to increase taxes, would that change your opinion  
6 about Sen. Burns?"

7 Complaint at 1. The complaint does not make a specific allegation as to what person or  
8 entity was responsible for the call, purportedly because "the recording included no  
9 disclaimer information." *Id.* See note 1, *infra*. However, the complainant alleges that  
10 based on the content of the call, "it is clear that the call was made either by Sen. Burns'  
11 campaign or by some other group working on behalf of his reelection." *Id.*

12 **B. Analysis**

13 Any public communication paid for by a political committee must include a  
14 disclaimer identifying who paid for and authorized such communication.

15 2 U.S.C. §441d(a); 11 C.F.R. §110.11(a). The term "public communication" includes a  
16 communication by means of a "telephone bank" to the general public.

17 2 U.S.C. §431(22). A "telephone bank" means more than 500 telephone calls of an  
18 identical or substantially similar nature made within any 30-day period.

19 2 U.S.C. §431(24). In this instance, it is unknown whether the call allegedly received by  
20 the complainant was one of 500 identical or substantially similar calls made within a 30-  
21 day period, and therefore whether the call was in fact a public communication.

22 The complaint asserts that Senator Conrad Burns' campaign, or "another group"  
23 working on behalf of Senator Burns' reelection, was responsible for the alleged call.

24 Complaint at 1. Senator Burns' authorized committee states categorically that it "did not  
25 sponsor, finance, contribute to, or have knowledge of the alleged phone call complained

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1 of.” Response at 1. We have no information to the contrary.<sup>1</sup> Therefore, the Commission  
2 found no reason to believe that Friends of Conrad Burns-2006 and James Swain, in his  
3 official capacity as treasurer, violated 2 U.S.C. §441d.

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<sup>1</sup> Additionally, the Commission has no information implicating the involvement of any other registered political committee, working either independently or on behalf of the Burns campaign, in the telephone call alleged in the complaint.

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